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7 Attorneys for Plaintiff Best Western
8 International, Inc.

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Best Western International, Inc., an
13 Arizona non-profit corporation,

14 Plaintiff

15 vs.

16 Horizon Hospitality, L.L.C., an Alabama
17 limited liability company; and Vijay Patel,
18 an individual,

19 Defendants.

20 STATE OF ARIZONA)

21) ss.

22 County of Maricopa)

No. CV 08-1932-PHX-HRH

**AFFIDAVIT IN SUPPORT OF
APPLICATION FOR DEFAULT
JUDGMENT**

23 Cheryl Pollack, being first duly sworn upon her oath, deposes and says:

24 1. I am Director of Member Services Administration of BEST WESTERN
25 INTERNATIONAL, INC., an Arizona non-profit corporation.

26 2. I have personal knowledge of the facts set forth in this Affidavit and am
authorized by BEST WESTERN INTERNATIONAL, INC. ("BEST WESTERN") to
make, execute and file this Affidavit.

3. On or about December 20, 2006, Horizon Hospitality, L.L.C., an Alabama
limited liability company; and Vijay Patel executed and delivered to BEST WESTERN a
Membership Application and Agreement requesting membership in the BEST
WESTERN organization with respect to the Birmingham Airport Hotel located in or near
Birmingham, Alabama (the "Hotel"). BEST WESTERN accepted this application and
granted Horizon Hospitality, L.L.C., and Vijay Patel membership in the BEST
WESTERN organization with respect to the Hotel.

1 5. At all relevant times, Defendants have been and are the owners of the
2 Hotel, and as such, are fully aware of their contractual obligations with respect to its
3 BEST WESTERN membership.

4 6. In part, the Membership Agreements are contracts to furnish Best Western
5 membership services and supplies to Defendants. Pursuant to the terms of the
6 Membership Agreement, Defendants agreed to pay promptly, when due, all fees and
7 assessments as required by the terms of the Best Western Articles of Incorporation,
8 Bylaws and Rules and Regulations.

9 7. Subsequent to entering into the Membership Agreement, Defendants were
10 provided with Best Western's customary membership services and supplies.
11 On or about February 20, 2008, Best Western terminated defendants' Best Western
12 membership for failure to maintain minimum quality standards at the Hotel and failure to
13 comply with the Best Western Articles and Bylaws, and Best Western Rules and
14 Regulations. Pursuant to such termination, Best Western advised that Defendants needed
15 to discontinue use of the Best Western Marks.

16 8. Attached hereto as **Exhibit A** and incorporated herein are billing statements
17 identifying the charges to Defendants' account and the dates and amounts incurred. The
18 balance of the account owed to Best Western International, Inc. by Defendants as of
19 December 1, 2008, was \$129,082.79, plus interest thereon at the rate of 1.5% per month
20 thereafter.

21 9. After repeated requests by BEST WESTERN, Defendants have refused to
22 cease and desist from use of the name, signage and membership mark of "BEST
23 WESTERN." The Defendants continued to hold themselves out to the public as a "BEST
24 WESTERN" member, despite their termination of the BEST WESTERN membership in
25 February, 2008, and despite notices regarding termination. Attached hereto as **Exhibit**
26 **"B"** are copies of photographs taken on March 13, 2008, depicting Defendants'
continued use of the Best Western name and logos.

 10. On April 30, 2008, a representative of BEST WESTERN again went to the
Hotel. As part of his duties, such representative took photographs of signs and/or
collateral items displayed in connection with the Hotel. Attached hereto as **Exhibit "C"**
are copies of photographs taken on May 17, 2008, depicting Defendants' continued use
of the Best Western name and logos. On October 29, 2008, a representative of BEST
WESTERN again went to the Hotel. As part of his duties, such representative took
photographs of signs and/or collateral items displayed in connection with the Hotel.
Attached hereto as **Exhibit "D"** are copies of a photograph taken on October 29, 2008,
depicting Defendants' continued use of the Best Western name and logos.

11. Pursuant to paragraph 24 of the Membership Agreement, BEST WESTERN may claim liquidated damages from Defendants in an amount equal to fifteen percent (15%) of the mean of Defendants' room rates per day multiplied by the total number of rooms for every day Defendants continue to use the BEST WESTERN Marks in excess of the fifteen (15) day period allowed. Defendants' hotel property has 198 rooms at an average daily room rate, as published by the defendants in the Best Western Travel Guide, of \$115.00. The information published in the Best Western Travel Guide was provided for publication by the defendants. A copy of that portion of the 2008 Travel Guide relating to the Hotel is attached hereto as **Exhibit "E"**.

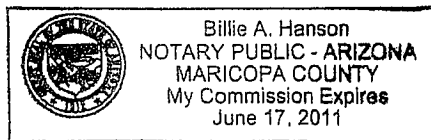
12. Using the information provided to Best Western by Defendants concerning room rates and numbers of rooms, the formula for liquidated damages to the present, calculates to \$3,415.50 per day. Applying such amounts to the number of days following termination of membership of the hotel property and through October 29²⁰⁰⁸, results in liquidated damages in the amount of \$802,462.50. *CP*

13. Vijay Patel is believed to be a member of Defendant Horizon Hospitality, L.L.C. Vijay Patel is not a minor, and to the best of my knowledge is not in the military or otherwise exempted from a default judgment under the Servicemembers Civil Relief Act, 50 U.S.C. App. §§ 501, *et seq.*

Dated this ____ day of February, 2009.

Cheryl Pollack
Cheryl Pollack

SUBSCRIBED AND SWORN to before me this 18th day of February, 2009.



Billie A. Hanson
Notary Public

My Commission Expires:

June 17, 2011

EXHIBIT A

STATEMENT**Best Western International, Inc**

P.O. Box 53505
 PHOENIX, ARIZONA 85072-3505
 (602) 957-4200

ACCOUNT NO.

01110

DATE:

MO. DAY YR

06 | 01 | 08

BIRMINGTON AIRPORT HOTEL
 ATTN: MR. ANUP PATEL
 3239 POINT MALLARD PKWY
 PRICEVILLE, AL 35601

PLEASE CUT HERE AND RETURN THIS STUB WITH YOUR REMITTANCE**\$** _____

DATE	REFERENCE	DESCRIPTION	CHARGES	PAYMENTS	BALANCE
		MEMBER NO. 01-110 PREVIOUS BALANCE			115,780.91
05 12 08	0005955033	FREQUENT FLYERS - SEE ATTACHED	4.50		
05 12 08	0005957196	GCC CHARGE 03-26-08 - 04-25-08	213.25		
05 16 08	FC-67344	Service Charge on Balances 45 Days and Older	1,705.66		
05 22 08	0005978374	MAY08 GDS - SEE ATTACHED	91.20		
05 22 08	0005980629	MAY08 3RD PTY INTERNET FEES	13.20		
CURRENT		OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS
2,027.81		2,077.98	906.96	81,590.35	31,205.62
					PLEASE PAY AMOUNT BELOW
					117,808.72
					NEW BALANCE

Terms: DUE AND PAYABLE UPON RECEIPT.

All accounts 45 days past due and older are subject to a 1 1/2% late charge
 per month, which is an **ANNUAL PERCENTAGE RATE OF 18%**

STATEMENT**Best Western International, Inc**

P.O. Box 53505
 PHOENIX, ARIZONA 85072-3505
 (602) 957-4200

ACCOUNT NO.

01110

DATE:

MO. DAY YR

07 | 01 | 08

BIRMINGTON AIRPORT HOTEL
 ATTN: MR. ANUP PATEL
 3239 POINT MALLARD PKWY
 PRICEVILLE, AL 35601

PLEASE CUT HERE AND RETURN THIS STUB WITH YOUR REMITTANCE

\$ _____

DATE	REFERENCE	DESCRIPTION	CHARGES	PAYMENTS	BALANCE
		MEMBER NO. 01-110 PREVIOUS BALANCE			117,808.72
06 13 08	0006015576	GCC CHARGE 04-26-08 - 05-25-08	341.37		
06 17 08	FC-67788	Service Charge on Balances 45 Days and Older	1,736.84		
06 19 08	0006028512	FREQUENT FLYERS - SEE ATTACHED	9.63		
CURRENT		OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS
2,087.84		2,027.81	2,077.98	906.96	112,795.97
					PLEASE PAY AMOUNT BELOW
					119,896.56
					NEW BALANCE

Terms: DUE AND PAYABLE UPON RECEIPT.

All accounts 45 days past due and older are subject to a 1 1/2% late charge
 per month, which is an **ANNUAL PERCENTAGE RATE OF 18%**



P.O. Box 53505
PHOENIX, ARIZONA 85072-3505
(602) 957-4200

DATE:
MO. DAY YR
09 | 01 | 08

\$ _____

Best Western International, Inc

STATEMENT



P.O. Box 53505
PHOENIX, ARIZONA 85072-3505
(602) 957-4200

ACCOUNT NO.	DATE:
01110	MO. DAY YR
	10 01 08

BIRMINGHAM AIRPORT HOTEL
ATTN: MR. ANUP PATEL
3239 POINT MALLARD PKWY
PRICEVILLE, AL 35601

PLEASE CUT HERE AND RETURN THIS STUB WITH YOUR REMITTANCE

\$

DATE	REFERENCE	DESCRIPTION	CHARGES	PAYMENTS	BALANCE
09 17 08	FC-68954	MEMBER NO. 01-110 PREVIOUS BALANCE Service Charge on Balances 45 Days and Older	1,826.07		123,528.23
CURRENT	OVER 30 DAYS	OVER 60 DAYS	OVER 90 DAYS	OVER 120 DAYS	PLEASE PAY AMOUNT BELOW
1,826.07	1,798.57	1,833.10	2,087.84	117,808.72	125,354.30
					NEW BALANCE

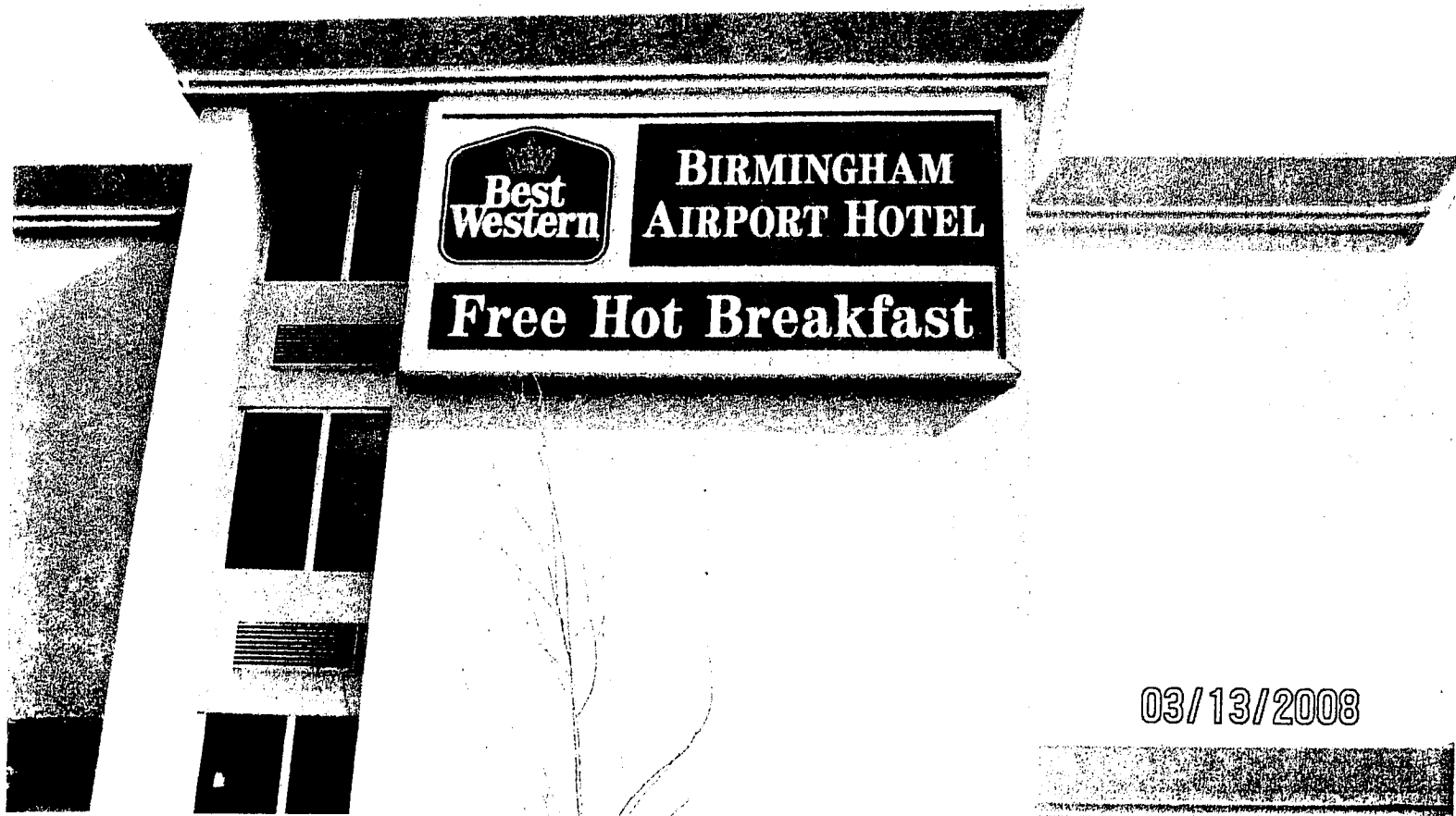
Terms: DUE AND PAYABLE UPON RECEIPT.

USE AND PAYABLE UPON RECEIPT:
All accounts 45 days past due and older are subject to a 1 1/2% late charge per month, which is an **ANNUAL PERCENTAGE RATE OF 18%**

EXHIBIT B







03/13/2008

EXHIBIT C



05/17/2008



**Best
Western**

**BIRMINGHAM
AIRPORT HOTEL**

Free Hot Breakfast

05/17/2008

EXHIBIT D



EXHIBIT E



The World's Largest Hotel Chain.®

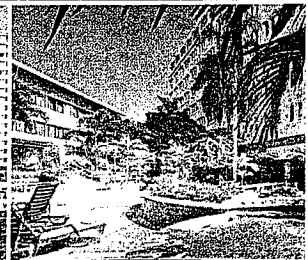
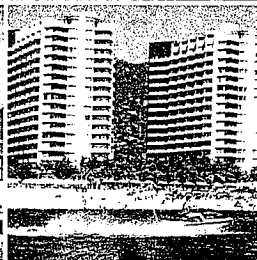
Hotel Guide and Road Atlas Best Western 2008

United States Canada Mexico Caribbean Central America South America

bestwestern.com®

Call 1.800.WESTERN® (1.800.937.8376) or your travel professional

Each Best Western® hotel is independently owned and operated.



United States

ALABAMA

BW Abbeville Inn

Abbeville

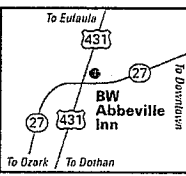
1237 US Hwy 431 South, Abbeville, AL 36310 Tel: 334-585-5060

Seasons 1PRS 2PRS
1/1-12/31 55-84 59-84



Rms: 40 Highway (01065)
C [Icons]

Leisure: Golf 10mi • Fishing, hunting 15mi • Lake Eufaula 25mi
General: Newly remodeled • Microwave & refrigerator available • HBO • Fax • In-room hairdryers • Pets with deposit • Seasonal pool • High-speed Internet • FAX: 334-585-5060



Directions: Hwy 431 south. Junction Hwy 27 & Hwy 431. Next to Hardee's and West Point Stevens.

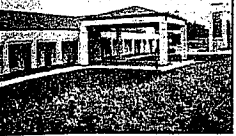
BW Horseshoe Inn

AAA ♦♦

Alexander City

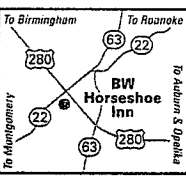
3146 Hwy 280, Alexander City, AL 35010 Tel: 256-234-6311

Seasons 1PRS 2PRS
1/1-12/31 69-75 69-75



Rms: 64 Highway (01087)
C [Icons]

Leisure: Lake Martin, Wind Creek Park 12mi Business: Russell Corp 10mi • Wireless Internet in all rooms General: Suites • Micro/fridge • Bass boat hookups • At door parking • 24hr C Store • Pool • No pets • Renovated rooms • FAX: 256-234-6314



Directions: Located intersection Hwy 280 at AL 22. 61mi SE of Birmingham, 41mi west of Auburn & Opelika, 44mi NE of Montgomery.

BW Andalusia Inn

Andalusia

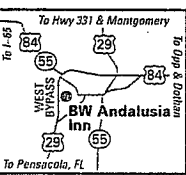
305 West Bypass, Andalusia, AL 36420 Tel: 334-222-9999

Seasons 1PRS 2PRS
1/1-5/31 65-80 65-80
6/1-8/31 70-85 70-85
9/1-12/31 65-80 65-80



Rms: 41 Highway (01070)
C [Icons]

Leisure: Antique shops, museum, theater 2mi Business: RJ-11 phone jacks • Free high-speed Internet access • Fax • Copier General: Outdoor seasonal pool • Micro-fridge • Coffeemaker • Jacuzzi® hot tub rooms • FAX: 334-222-4551



Directions: From Montgomery: I-65 Exit 114, Hwy 55S. From Mobile: I-65N Exit 93, Hwy 84E. Hwy 29 & 55 Bypass.

BW Athens Inn

AAA ♦♦

Athens

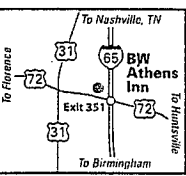
1329 Hwy 72 East, PO Box 1168, Athens, AL 35612 Tel: 256-233-4030

Seasons 1PRS 2PRS
1/1-12/31 59-99 69-99



Rms: 83 Highway (01051)
H [Icons]

Leisure: NASA Space Center 15mi • Fish 12mi • Business center on-site • Hi-speed Internet General: In-room coffee • Fridge • Micro • Seasonal pool May-Oct • 25in remote TV • HBO • CNN • ESPN • Small pets w/\$10 fee • FAX: 256-233-4554



Directions: Midway between Nashville & Birmingham on NW corner of Hwy 72 & I-65, Exit 351. Easy on/off access.

BW of Atmore

AAA ♦♦

Atmore

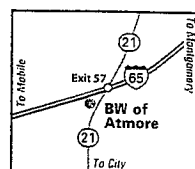
6141 Hwy 21, Atmore, AL 36502 Tel: 251-368-8182

Seasons 1PRS 2PRS
1/1-12/31 58-64 63-70



Rms: 88 Highway (01040)
C [Icons]

Leisure: Casino w/1200 electronic gaming machines 1/2mi • Creek Indian Reservation 5mi Business: Fax & copier 24hr • Wireless HSA • Banq rms General: Easy truck pkg • Gulf 60mi • Ssnl outdr pool • Fridge • Micro • FAX: 251-368-1035



Directions: I-65 & Hwy 21, Exit 57. 5mi N of Atmore. 60mi N of Pensacola, FL. 55mi NE of Mobile, AL. 115mi S of Montgomery, AL.

BW University Convention Center

AAA ♦♦

Auburn

1577 South College Street, Auburn, AL 36831 Tel: 334-821-7001 • 800-AUBURN3

Seasons 1PRS 2PRS
1/1-8/31 79-129 79-129
9/1-11/30 79-249 79-249
12/1-12/31 79-129 79-129



Rms: 121 Intown (01095)
C [Icons]

Leisure: Jordan-Hare Stadium, Auburn Univ 1.5mi • Tuskegee Univ 8mi • Robert Trent Jones Golf Course 9mi • General: On-site rstrnt & Inge • Free hi-sp Net • Banquet/mtg rms • Small pets w/limitations & fee • FAX: 334-821-7008



Directions: Interstate 85, Exit 51, go north 1.5mi. Property on right, 1.5mi from Auburn University.

BW Hotel & Suites

AAA ♦♦

Bessemer

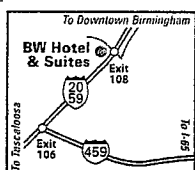
5041 Academy Lane, Bessemer, AL 35022 Tel: 205-481-1950 • 877-741-3232

Seasons 1PRS 2PRS
1/1-12/31 99-250 99-250



Rms: 70 Highway (01085)
H [Icons]

Leisure: Theme/water park, outlet shopping 2mi Business: Fax & copy service • Hi-speed Internet • Negotiated rates • Civic Center 2mi General: 5 restaurants adj • Spa • Seasonal pool • Truck parking • FAX: 205-481-2397



Directions: Exit 108 off I-20/59. 15mi south of Birmingham and 35mi east of Tuscaloosa.

BW Birmingham Airport Hotel

Birmingham

5216 Messer Airport Highway, Birmingham, AL 35212 Tel: 205-591-7900

Seasons 1PRS 2PRS
1/1-12/31 105-115 115-125

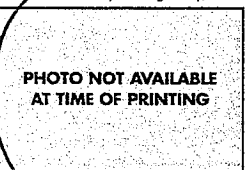


PHOTO NOT AVAILABLE AT TIME OF PRINTING

Rms: 198 Airport (01110)
H [Icons]

Leisure: Civil Rights Museum 5mi • Downtown entertainment 3mi • Talladega 45mi Business: Convention Center 3mi • Business center on site General: Comp shuttle to airport • Pet friendly • Cocktail lounge-dinner • FAX: 205-591-6004



Directions: 1mi from BHM. From 20 & 59: take Exit 129, exit left. From Interstate 65 take Interstate 59 & 20 Exit 129, exit left.

BW Carlton Suites

AAA ♦♦♦

Birmingham

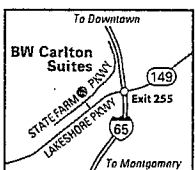
140 State Farm Pkwy, Birmingham, AL 35209 Tel: 205-940-9990 • 800-213-0079

Seasons 1PRS 2PRS
1/1-12/31 80-169 80-169



Rms: 103 Intown (01096)
H [Icons]

General: All suites hotel • Hot buffet breakfast • Cocktails & hors d'oeuvres M-Th • Whirlpool suites available • Business center • Heated indoor pool • Wired & wireless Internet • Restaurants & shopping w/in 1mi • FAX: 205-940-9930



Directions: I-65 South Exit 255. Right @ 1st light. Right @ 2nd light. Hotel located on left hand side.

FOR ADDITIONAL BIRMINGHAM LISTINGS AND MAP SEE FOLLOWING PAGE

SEE PAGE 2 FOR THE KEY TO READING LISTINGS AND SYMBOLS

ALABAMA FOR STATE MAP SEE PAGE 300